

GENERAL ORDER OF NOVEMBER 17, 2000

ORDER ADOPTING AMENDMENTS TO LOCAL CIVIL RULES CR 5 AND CR 26 THROUGH 37, INCLUSIVE

LOCAL CIVIL RULES GOVERNING DISCOVERY AND PRETRIAL PROCEDURE

Pursuant to 28 U.S.C. § 2071, and to Rule 83 of the Federal Rules of Civil Procedure ("Fed. R. Civ. P."), it is hereby ORDERED, that local civil rules CR 5 and CR 26 through 37, inclusive, are amended as set forth in the attachment to this Order.

These amendments shall be effective as of 12:01 a.m. on December 1, 2000. The amendments are required, in light of amendments to the Federal Rules of Civil Procedure which take effect that day. The federal and local rules as amended will apply in full to all cases filed with this court, or removed to this court from state court, on or after December 1, 2000. The balance of this order defines the applicability of the amended rules to cases filed in this court, or removed to this court from state court, prior to December 1, 2000.

While this order specifically addresses the applicability of certain rules, it does not discuss all of the rules. All parties remain responsible for familiarity with the federal and local rules, as amended.

The following provisions of the federal and local rules shall NOT apply to civil cases filed in this court, or removed to this court from state court, prior to December 1, 2000, unless otherwise ordered by the court in a specific case:

- (1) Delay of Commencement of Discovery. Fed. R. Civ. P. 26(d).
- (2) Meeting of Parties and Preparation of Discovery Plan. Fed. R. Civ. P. 26(f).
- (3) Initial Disclosures, as required by Fed. R. Civ. P. 26(a)(1).

The following provisions of the federal and local rules shall apply as provided below to civil cases filed in this court, or removed to this court from state court, prior to December 1, 2000, unless otherwise ordered by the court in a specific case:

- (4) Expert Witness Disclosures. If, prior to December 1, 2000, a party has made the disclosures required by Local Rule CR 26(a)(2) then in effect, the party need not make the disclosures required by Fed. R. Civ. P. 26(a)(2).
- (5) Number of Depositions. Fed. R. Civ. P. 30(a). No party may take more than ten depositions on or after December 1, 2000, without specific authorization from the court. Depositions taken prior to December 1, 2000 shall not be counted against the limitation in the rule, unless the court otherwise orders.

(6) Number of Interrogatories. Fed. R. Civ. P. 33(a). Without specific authorization from the court, no party may propound more than 25 interrogatories, including all discrete subparts, on or after December 1, 2000. In addition, in a civil case filed in this court or removed to this court from state court prior to December 1, 2000, no party may propound at any time more than 35 interrogatories, including all discrete subparts.

Except as set forth in this Order, or as ordered by the court in a specific case, the rules as amended effective December 1, 2000, shall apply IN FULL to civil cases filed in this court, or removed to this court from state court, prior to that date. The following are examples of provisions of the federal and local rules that apply to such cases:

(7) Scope of Discovery. Fed. R. Civ. P. 26(b).

(8) Limit on Length of Depositions: One Day of Seven Hours. Fed. R. Civ. P. 30(d).

(9) Procedure for Introduction of Depositions into Evidence. Local Rule CR 32(e).

(10) Meaning of Requirement that Parties "Confer" Before Bringing a Discovery Motion. Local Rule CR 37(a).

(11) Sanctions for Failure to Disclose. Fed. R. Civ. P. 37(c)(1).

(12) Filing of Discovery Materials. Fed. R. Civ. P. 5(d) and 30(f).

DATED this 16th day of November, 2000.

Comment

The most significant of the 12/1/93 amendments to the Federal Rules of Civil Procedure were those requiring initial "laydown disclosures" by all parties at the outset of the case. These rules are set forth in the new Fed.R.Civ.Pro. 26(a)(1). The federal rule authorizes districts to "opt out" of these provisions, and the W.D.Wn. has done so. Accordingly, Local Rule CR 26(a)(1) contains instead the provisions of the new federal rule 26(a)(5).

New federal rule 26(a)(2) requires each party to disclose specific information as to each expert witness it intends to call at trial. It also requires that party to furnish the other parties a written report from each such expert. The W.D.Wn. requires the identification of experts and the furnishing of certain information about them, but has "opted out" of the requirement for furnishing written reports. Under the local rule, counsel is required to furnish other parties a statement which contains essentially the same information as would have been contained in the expert's report. The local rule deletes the requirement for a listing of cases in which the expert has testified. It has also altered the time schedule prescribed in the federal rule for identifying expert witnesses and providing information about them.

Rule 26(a)(3) requires disclosure of other witnesses and exhibits, and timely statement of any

objections by another party. The local rule changes the timing for these disclosures, and for any objections, to fit the district's procedure under CR 16 for preparing the proposed pretrial order.

Rule 26(a)(4) modifies the federal rule by providing that discovery disclosures served on other parties are not to be filed with the court.

Local Rule CR 26(b), "Discovery Scope and Limits," reflects the federal rule of the same number, as amended, with only very minor changes in (b)(2) and (b)(4)(A).

Local Rule CR 26(c), "Protective Orders," is identical to the federal rule of the same number, as amended.

New federal rule 26(d) prohibits the commencement of discovery until the parties have met and conferred, and have formulated a proposed discovery plan, as required by new federal rule 26(f). Because W.D.Wn. does not require the parties to meet and confer at the outset of the case, or to submit a proposed discovery plan, these rules delete the limitation in 26(d) on the commencement of discovery, and all the provisions of 26(f).

Rule 26(g), "Signing of Disclosures, Discovery Requests, Responses and Objections" reflects the federal rule of the same number, with only a modification in (g)(1) to delete the reference to disclosures under 26(a)(1).

[Comment adopted effective September 30, 1994.]